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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,178	10/23/2003	Thomas Christian Lines	14682-005001	8351
26161	7590	08/25/2005	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,178

Applicant(s)

LINES ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,821,536. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims encompasses the ingredients of the claims and do not exclude the other ingredients.

Claims 1-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 2005/0031737 A1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims encompasses the ingredients of the claims and do not exclude the other ingredients.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-9, 16-25, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorsek (6,649,195).

Gorsek discloses a composition containing quercetin and Vitamin B3 as in claims 1, 2, 3, and the vitamins of claim 4 (col. 3, lines 10-60 and col. 5, lines 30-35).

The composition can be in dry form as in a tablet as in claims 7-9.

Taurine is disclosed as in claims 16-21.

Since the composition is to enhance eyesight, the composition is administered as in claims 22, 23, 24, 25 and 28 as in claims 1-4 above (col. 4, lines 26-30).

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorsek (6,551,629).

Gorsek '629 discloses a composition containing vitamins B3, C and quercetin as in claims 1-3 and the B vitamins and E of claim 4, and green tea which contains caffeine and catechins as in claims 5 and 6 (col. 3, lines 10-50). Green tea is known to contain caffeine.

Claims 1-6, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (5,846,569).

Anderson et al. disclose a composition containing quercetin and Vitamin B3 as in claims 1, 2, 3, and the vitamins of claim 4 and Coenzyme Q10 of claim 16 (col. 5, lines 40-65).

The reference also discloses the use of green tea which is seen to contain caffeine, as in claims 5 and 6 and the other ingredients since it is a green tea, and nothing is seen to have been removed from the green tea.

Claims 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. '569.

Anderson et al. '569 disclose the composition as in claims 1-4. The reference also discloses the use of green tea which is seen to contain caffeine, as in claim 5 and the other ingredients since it is a green tea, and nothing is seen to have been removed from the green tea. Therefore, it would have been obvious to use a green tea because it contains the claimed ingredients.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorsek '629 in view of Rosenberg et al. (6,579,544) and Husz (6,277,427), and Pearson (6,261,589) and Xiong et al. (6,299,925)

The limitations of claims 1-9 have been disclosed as to Gorsek. Some other ingredients found in the claims are found in these additional references. Rosenberg et al. further disclose that the use of quercetin is known in dietary supplements, as in claim 1, vitamin E, soy isoflavones, and ginko as in claims 16-21 (col. 19, lines 1-35). Husz discloses a composition containing caffeine, vitamin C, iron, vitamins in beverages, ginko extract as in claims 16-21 in a beverage (abstract). Pearson et al. disclose a

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composition containing B vitamins, caffeine and green tea in a carbonated mixture (abstract). The reference to Pearson et al. also disclose that taurine as in claims 16-21 and B vitamins along with caffeine is beneficial (col. 6, lines 10-50). Xiong et al. disclose green tea plant extract which is caffeinated with ginkgo biloba and B vitamins, and vitamin C. (col. 9, lines 30-65, col. 10, line 30). Therefore, it would have been obvious to use various known ingredients as disclosed above for their known function in beverages and supplements meant to improve health.

Nothing new is seen in supplementing various food compositions with vitamins as in claims 1-5 and with a green tea extract as in claim 6 as foods are routinely supplemented with vitamins. It would have been obvious to supplement beverages with green tea extract since the extract is from tea, and teas are generally made from extracts as in extracting tea from tea leaves as in claims 7-15. Therefore, it would have been obvious to supplement foods with vitamins and quercetin.

Claims 26, 27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Anderson et al. '569.

Claims 26, 27, and 29 further require a particular ingredients found in green tea extract. Anderson et al. disclose the use of Green Tea. Nothing is seen that it is not an extract, as teas are generally made from extracted material. Therefore, it would have been obvious to make a composition containing the ingredients of claims 26, 27 and 29 since they are found in green tea, and it would have been obvious to combine it with the above references for the known functions of the ingredients.

### **CONTINUING DATA**

The continuing data needs to be updated as to the patent number for the application 10/302,544 (6,821,536).

### **Information disclosure statement**


Only the references initialed have been received.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-21-05

  
HELEN PRATT  
PRIMARY EXAMINER